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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
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11 ALBERTO LIZARRAGA,) Case No.: 1:23-cv-00888-SKO (HC)
12)
13 Petitioner,) ORDER DISMISSING PETITION WITH LEAVE
14) TO FILE AN AMENDED PETITION
15 v.)
16) ORDER DIRECTING CLERK OF COURT TO
17 U.S. DISTRICT COURT,) PROVIDE PETITIONER WITH BLANK § 2254
18) FORMS
19 Respondent.) [THIRTY-DAY OBJECTION DEADLINE]
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30 Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus
31 pursuant to 28 U.S.C. § 2254. Upon conducting a preliminary screening of the petition, the Court
32 finds that Petitioner has failed to name a proper respondent, failed to present any cognizable grounds
33 for relief, and failed to exhaust state remedies. Therefore, the Court will DISMISS the petition with
34 leave to file a First Amended Petition.

35 **I. PROCEDURAL HISTORY**

36 On September 8, 2013, Petitioner was convicted in the Kern County Superior Court of
37 attempted murder with great bodily injury. (Doc. 1 at 2.¹) On April 15, 2015, he was sentenced to a
38 total term of 32 years to life without possibility of parole. (Doc. 1 at 2.) Petitioner does not indicate
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48 ¹ References are to the docket using ECF pagination.

1 that he filed an appeal or pursued collateral relief in the state courts. Petitioner filed the instant federal
2 petition on May 30, 2023. (Doc. 1.)

3 **II. DISCUSSION**

4 **A. Preliminary Review of Petition**

5 Rule 4 of the Rules Governing Section 2254 Cases requires the Court to make a preliminary
6 review of each petition for writ of habeas corpus. The Court must summarily dismiss a petition “[i]f it
7 plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in
8 the district court” Rule 4; O’Bremski v. Maass, 915 F.2d 418, 420 (9th Cir. 1990). The Advisory
9 Committee Notes to Rule 8 indicate that the Court may dismiss a petition for writ of habeas corpus,
10 either on its own motion under Rule 4, pursuant to the respondent’s motion to dismiss, or after an
11 answer to the petition has been filed.

12 **B. Failure to Name a Respondent**

13 Petitioner names the U.S. District Court as Respondent. A petitioner seeking habeas corpus
14 relief under 28 U.S.C. § 2254 must name the state officer having custody of him as the respondent to
15 the petition. Rule 2 (a) of the Rules Governing § 2254 Cases; Ortiz-Sandoval v. Gomez, 81 F.3d 891,
16 894 (9th Cir. 1996); Stanley v. California Supreme Court, 21 F.3d 359, 360 (9th Cir. 1994).

17 Normally, the person having custody of an incarcerated petitioner is the warden of the prison in which
18 the petitioner is incarcerated because the warden has "day-to-day control over" the petitioner.

19 Brittingham v. United States, 982 F.2d 378, 379 (9th Cir. 1992); see also Stanley, 21 F.3d at 360.

20 However, the chief officer in charge of state penal institutions is also appropriate. Ortiz, 81 F.3d at
21 894; Stanley, 21 F.3d at 360.

22 Petitioner’s failure to name a proper respondent requires dismissal of his habeas petition for
23 lack of jurisdiction. Stanley, 21 F.3d at 360; Olson v. California Adult Auth., 423 F.2d 1326, 1326
24 (9th Cir. 1970); see also Billiteri v. United States Bd. Of Parole, 541 F.2d 938, 948 (2nd Cir. 1976).

25 Nevertheless, Petitioner will be provided the opportunity to cure this defect by amending the petition
26 to name a proper respondent.

27 **C. Failure to State a Cognizable Federal Claim**

28 The basic scope of habeas corpus is prescribed by statute. Title 28 U.S.C. § 2254(a) states:

1 The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain
2 an application for a writ of habeas corpus in behalf of a person in custody pursuant to a
3 judgment of a State court *only on the ground that he is in custody in violation of the
4 Constitution or laws or treaties of the United States.*

5 (emphasis added). See also Rule 1 to the Rules Governing Section 2254 Cases in the United States
6 District Court. The Supreme Court has held that “the essence of habeas corpus is an attack by a
7 person in custody upon the legality of that custody . . .” Preiser v. Rodriguez, 411 U.S. 475, 484
(1973).

8 To succeed in a petition pursuant to 28 U.S.C. § 2254, Petitioner must demonstrate that the
9 adjudication of his claim in state court:

10 (1) resulted in a decision that was contrary to, or involved an unreasonable application
11 of, clearly established Federal law, as determined by the Supreme Court of the United
12 States; or (2) resulted in a decision that was based on an unreasonable determination of
13 the facts in light of the evidence presented in the State court proceeding.

14 28 U.S.C. § 2254(d)(1),(2).

15 In addition to the above, Rule 2(c) of the Rules Governing Section 2254 Cases requires that the
16 petition:

- 17 (1) Specify all the grounds for relief available to the petitioner;
- 18 (2) State the facts supporting each ground;
- 19 (3) State the relief requested;
- 20 (4) Be printed, typewritten, or legibly handwritten; and
- 21 (5) Be signed under penalty of perjury by the petitioner or by a person authorized to sign it
22 for the petitioner under 28 U.S.C. § 2242.

23 The instant petition is deficient. First, Petitioner does not specify his grounds for relief. In the
24 space provided to do so, Petitioner sets forth a long narrative of issues and statements. The Court
25 cannot discern the claims Petitioner seeks to raise and much of it does not make sense. For example, a
26 contention he repeats often is that counsel was ineffective for failing “to point out many Marshal Law
27 of California state violations of obsconding [sic] and minipulating [sic] state law jurisdiction in court
28 procedure.” (Doc. 1 at 3.) The Court cannot understand what Petitioner is attempting to claim.

Second, Petitioner fails to state how the state court’s resolution of his claims resulted in a
decision that was contrary to, or involved an unreasonable application of, clearly established Federal
law, as determined by the Supreme Court of the United States; or resulted in a decision that was based

on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. It is not a federal habeas court's role to review a petitioner's trial and determine what claims can be raised. Accordingly, Petitioner will be provided an opportunity to properly set forth his claims. Petitioner is advised that he must comply with the rules specified above.

D. Failure to Exhaust State Remedies

A petitioner who is in state custody and wishes to collaterally challenge his conviction by a petition for writ of habeas corpus must exhaust state judicial remedies. 28 U.S.C. § 2254(b)(1). The exhaustion doctrine is based on comity to the state court and gives the state court the initial opportunity to correct the state's alleged constitutional deprivations. Coleman v. Thompson, 501 U.S. 722, 731 (1991); Rose v. Lundy, 455 U.S. 509, 518 (1982).

A petitioner can satisfy the exhaustion requirement by providing the highest state court with a full and fair opportunity to consider each claim before presenting it to the federal court. Duncan v. Henry, 513 U.S. 364, 365 (1995). A federal court will find that the highest state court was given a full and fair opportunity to hear a claim if the petitioner has presented the highest state court with the claim's factual and legal basis. Duncan, 513 U.S. at 365 (legal basis); Kenney v. Tamayo-Reyes, 504 U.S. 1, 112 S.Ct. 1715, 1719 (1992) (factual basis).

Additionally, the petitioner must have specifically told the state court that he was raising a federal constitutional claim. Duncan, 513 U.S. at 365-66. In Duncan, the United States Supreme Court reiterated the rule as follows:

In Picard v. Connor, 404 U.S. 270, 275 . . . (1971), we said that exhaustion of state remedies requires that petitioners "fairly presen[t]" federal claims to the state courts in order to give the State the "opportunity to pass upon and correct alleged violations of the prisoners' federal rights" (some internal quotation marks omitted). If state courts are to be given the opportunity to correct alleged violations of prisoners' federal rights, they must surely be alerted to the fact that the prisoners are asserting claims under the United States Constitution. If a habeas petitioner wishes to claim that an evidentiary ruling at a state court trial denied him the due process of law guaranteed by the Fourteenth Amendment, he must say so, not only in federal court, but in state court.

Duncan, 513 U.S. at 365-366. The Ninth Circuit examined the rule further, stating:

Our rule is that a state prisoner has not "fairly presented" (and thus exhausted) his federal claims in state court unless he specifically indicated to that court that those claims were based on federal law. See Shumway v. Payne, 223 F.3d 982, 987-88 (9th Cir. 2000). Since the Supreme Court's decision in Duncan, this court has held that the petitioner must make the federal basis of the claim explicit either by citing federal law

or the decisions of federal courts, even if the federal basis is “self-evident,” Gatlin v. Madding, 189 F.3d 882, 889 (9th Cir. 1999) (citing Anderson v. Harless, 459 U.S. 4, 7 . . . (1982), or the underlying claim would be decided under state law on the same considerations that would control resolution of the claim on federal grounds. Hiivala v. Wood, 195 F3d 1098, 1106-07 (9th Cir. 1999); Johnson v. Zenon, 88 F.3d 828, 830-31 (9th Cir. 1996);

....

In Johnson, we explained that the petitioner must alert the state court to the fact that the relevant claim is a federal one without regard to how similar the state and federal standards for reviewing the claim may be or how obvious the violation of federal law is.

Lyons v. Crawford, 232 F.3d 666, 668-669 (9th Cir. 2000), *as amended by* Lyons v. Crawford, 247 F.3d 904, 904-5 (9th Cir. 2001).

Petitioner does not indicate that he has pursued an appeal or sought any relief in the state courts. If Petitioner has not presented any claims for federal relief to the state courts, in particular, the California Supreme Court, the Court must dismiss the petition. Raspberry v. Garcia, 448 F.3d 1150, 1154 (9th Cir. 2006); Jiminez v. Rice, 276 F.3d 478, 481 (9th Cir. 2001). Petitioner will be provided an opportunity to set forth his exhausted claims and specify the manner the claims were exhausted. If Petitioner has not exhausted his state remedies, he is directed to file a notice of voluntary dismissal, whereupon the petition will be dismissed without prejudice to returning once exhaustion is complete.

III. ORDER

Accordingly, IT IS HEREBY ORDERED:

- 1) The petition for writ of habeas corpus is DISMISSED with leave to amend;
- 2) The Clerk of Court is DIRECTED to provide Petitioner with blank § 2254 habeas forms;
and
- 3) Petitioner is DIRECTED to file a First Amended Petition, or a Notice of Voluntary Dismissal, within thirty (30) days of the date of service of this Order. Failure to do so will result in a recommendation that the action be dismissed.

IT IS SO ORDERED.

Dated: **June 14, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE